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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/579,200	02/01/2007	Christophe Van Landuyt	0119/0056	1410

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EXAMINER

YOUNG, RACHEL T

ART UNIT	PAPER NUMBER
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4138

MAIL DATE	DELIVERY MODE
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07/22/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/579,200	Applicant(s) LANDUYT, CHRISTOPHE VAN	
	Examiner RACHEL T. YOUNG	Art Unit 4138	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 May 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>11/20/08</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Preliminary Amendment

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Priority

2. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Claim Objections

3. Claims 1 and 7-9 are objected to because of the following informalities: Claim 1, line 3 recites "housing a gas-treatment" which appears to be a missing a comma between housing and a. Claims 7-9 recites "HME", which should be spelled out. Appropriate correction is required.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

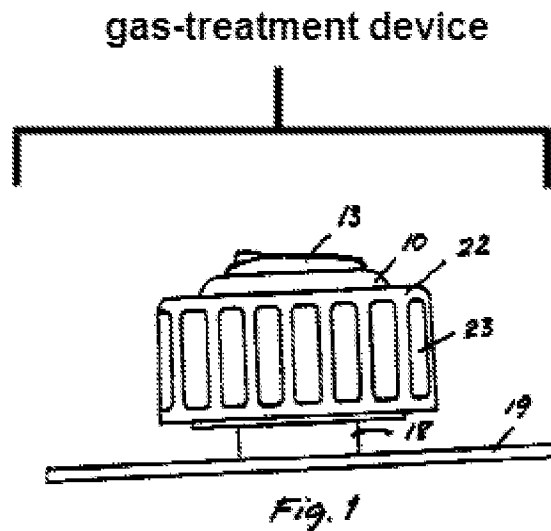
A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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5. Claims 1-8 and 10 rejected under 35 U.S.C. 102(b) as being anticipated by Persson (U.S. Patent No. 6422235 B1).

As to claim 1, Persson teaches a gas-treatment device (Fig. 1 below) for use with a tracheostomy tube (Page 1, ¶ 23, ll. 22), the device including a housing (10) (Fig. 1) adapted for connection to the tube (Page 1, ¶ 23, ll. 17-22), a gas passage in the housing (11) (Fig. 5), a gas-treatment unit (20, 21, 22) mounted with the housing (Fig. 2 and 4), characterized in that the gas-treatment unit is displaceable (Page 2, ¶ 24) from a first position (Fig. 5) (Page 2, ¶ 27) in which gas can flow from the tube through the gas-treatment unit via the gas passage, to a second position (Fig. 4) (Page 2, ¶ 26, ll. 1-6) in which the gas passage is substantially blocked preventing flow of gas out of the machine end of the tracheostomy tube.



As to claims 2-4, Persson teaches that the gas-treatment unit is displaceable by rotation (Page 2, ¶ 24), that the gas-treatment unit remains in the first or second position unless manually displaced (Page 2, ¶ 27), and that the gas-treatment unit

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includes a projection (21) (Fig. 4) accessible at an end of the housing (Page 2, ¶ 24, ll. 6-13) by which the gas-treatment unit can be displaced (Page 2, ¶ 24, ll. 6-13).

. As to claims 5-6, Persson teaches that the device includes a resilient member (20) (Fig. 5) ("flexible rubber membranes" Page 2, ¶ 24, ll. 2) arranged to displace the gas-treatment unit to a first position (Fig. 5) when released (Page 2, ¶ 24, ll. 1-2), and that the gas-treatment unit is cylindrical (Fig. 4 above).

As to claims 7-8 and 10, Persson teaches that the gas-treatment unit includes an HME element (22) (Fig. 1) (Page 2, ¶ 25, ll. 1), at opposite ends (Fig. 3), and a tracheostomy tube assembly including a tracheostomy tube (18) (Fig. 2) (Page 2, ¶ 23, ll. 22) and a gas-treatment device (Fig. 1 above) connected at the machine end of the tube (18) (Page 2, ¶ 23, ll. 17-22).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Persson in view of Turnbull (U.S. Patent No. 5647344).

As to claim 9, Persson discloses the claimed invention except that the or each HME element is of a treated paper. However, Turnbull teaches a heat and moisture exchanger comprising an HME element that is made of a treated paper (Col. 1, ll. 13-

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15). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Persson's device such that the or each HME element is of a treated paper, as taught by Turnbull, for the purpose of providing a low resistance to flow, a high efficiency in exchange of heat and moisture, a long life and be easily made at low cost (Col. 1, ll. 24-26).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to RACHEL T. YOUNG whose telephone number is (571) 270-1481. The examiner can normally be reached on Monday through Friday, 8 AM-5PM, Est., alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Melba Bumgarner can be reached on 571-272-4709. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/R. T. Y./
Examiner, Art Unit 4138

/Quang D. Thanh/
Supervisory Patent Examiner, Art
Unit 4138